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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EMILO VEGA,

Defendant and Appellant.

E049514

(Super.Ct.No. FWV803014)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael R. Libutti, Judge. Affirmed with directions.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Steven Vega, was charged with two counts of attempted willful, premeditated and deliberate murder of a police officer, during which a principal used a firearm and discharged a firearm and which were committed for the benefit of a gang,

two counts of assault with a deadly weapon on the same officers, with the same gun and gang allegations, and felony evading a police officer (Veh. Code, § 2800.2, subd. (a)), during which he used a firearm, resisting a police officer (Pen. Code, § 69) and possessing a firearm as an ex-felon (Pen. Code, § 12021, subd. (a)(1)), all of which he committed for the benefit of a gang (Pen. Code, § 186.22, subd. (b)(1)(A)). He was also charged with having a concealed firearm in a vehicle and carrying a loaded gun while being an active member in a gang. It was alleged that he had suffered a strike prior (Pen. Code, § 667, subds. (b)-(i)), a violent prior conviction, for which he served a prison term (Pen. Code, § 667.5, subd. (a)), and four priors for which he served prison terms (Pen. Code, § 667.5, subd. (b)). He pled no contest to evading an officer, resisting an officer and possessing a firearm and he admitted the gang allegation attached to the evading count. He admitted having suffered the strike prior and one of the Penal Code section 667.5, subdivision (b) prison priors. As part of his plea bargain, he waived his right to appeal. He was sentenced to the agreed-to term of 11 years in prison, which consisted of double the midterm for evasion, a consecutive doubled midterm for the gang allegation, concurrent low terms for the other two convictions and one year for the prison prior. There is no certificate of probable cause in the record before this court.

Defendant appealed and upon his request this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 387 U.S. 738 [87 S.Ct. 1396] setting forth a

statement of the case, a summary of the facts, and two potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

After concluding our review of the record, we affirm the judgment, while directing the trial court to amend the minutes of August 25, 2009.

### **FACTS**

At about 5:54 p.m. on November 10, 2008, two uniformed Ontario Police officers in a marked patrol car encountered a car driven by defendant without its headlights on. The officers activated the overhead red and blue rotating lights and siren on their cruiser and followed the car, getting within a car length, in an attempt to pull defendant over. However, defendant did not stop, but drove, instead, onto the freeway, then made a sudden turn, an unsafe lane change and recklessly swerved in and out of lanes in heavy traffic, almost crashing into another car or cars. In attempting to stay with defendant's car, the officers almost collided with a semi. Defendant made a hard right to get off the freeway. On the off-ramp, he shot at the patrol car, then tossed the gun out the window. Defendant continued driving recklessly on a city street, then stopped his car. Defendant got out and ran and was later apprehended by the SWAT team, after kicking a police dog, who had cornered him, several times in the head. Defendant continued to resist the arresting officers. After waiving his *Miranda*<sup>1</sup> rights, defendant admitted attempting to

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436

evade the officers in the patrol car because he was a parolee and he thought the officers had a warrant for his arrest. He admitted he had a gun and that he was a gang member.

### DISCUSSION

Citing *People v. Hester* (2000) 22 Cal. 4th 290, 295 (*Hester*), *People v. Hardy* (1999) 73 Cal.App.4th 1429 and *People v. Scott* (1994) 9 Cal.4th 331 (*Scott*), and providing no analysis or development, defendant contends that his sentence is unauthorized. *Hardy* noted in dicta that when a defendant has one strike prior, the sentencing court may not double any of the enhancements it imposes. (*People v. Hardy, supra*, 73 Cal.App.4th at p. 1433.) In *People v. Jefferson* (1999) 21 Cal.4th 86, 101, the California Supreme Court noted, “Decisions of the Courts of Appeal that have addressed the issue have held, albeit without extended analysis, that section 667(e)(1)’s sentence-doubling language does not apply to sentence enhancements. (*People v. Dominguez* (1995) 38 Cal.App.4th 410, 424 . . . ; *People v. Martin* (1995) 32 Cal.App.4th 656, 666 . . . ; see also *People v. McKee* (1995) 36 Cal.App.4th 540, 546-548 . . . ).”

Therefore, it appears initially that the doubling of the gang enhancement attached to the evasion conviction constituted an unauthorized sentence. However, in *Hester*, the California Supreme Court held that even if a sentence is unauthorized, “[w]here the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure . . . . The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to

better the bargain through the appellate process. [Citations.] . . . [A]cceptance of the plea bargain here was [an implicit waiver of]” defendant’s claim that his sentence was unauthorized. (*Hester, supra*, 22 Cal.4th at p. 295.) *Scott*, which defendant also cites, merely holds that a defendant does not forfeit an argument on appeal that the sentence is unauthorized by failing to assert it below. (*Scott, supra*, 9 Cal.4th at pp. 331, 354.) Therefore, under *Hester*, in accepting the benefits of his bargain, which were extensive considering the number of counts and allegations defendant was facing, defendant cannot now complain that the doubling of his gang allegation term was an unauthorized sentence.

For the same reason, defendant cannot carry his burden of showing a reasonable probability that if his attorney below had objected to the doubling of his gang allegation term during plea bargain negotiations, defendant would have ultimately received a more lenient sentence, therefore, counsel was incompetent for not doing so. (*Strickland v. Washington* (1984) 466 U.S. 668; *People v. Pope* (1979) 23 Cal.3d 412, 425.)

We have concluded our independent review of the record and find no arguable issues.

**DISPOSITION**

The trial court is directed to amend the minutes of August 25, 2009 to show that defendant admitted prison prior number 2, not number 1, as the minutes currently state.

In all other respects, the judgment is affirmed.

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RAMIREZ  
P.J.

We concur:

McKINSTER  
J.

MILLER  
J.